IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.621 OF 1983

1.Devu Laxman Madval
(since deceased by his heirs)
A) Vasant Devu Madwal
B) Laxmibai Narayan Madwal
C) Bhagirathibai Devu Madwal
D) Bhagirathibai Devu Madwal
E) Jayavanti Vasant Mhapankar ...Appellants

Vs.

1. Laxman Maloji Parab
2. Jagannath Tanu Parab
3. Sadashiv Sakharam Parab
(since deceased by his heirs & L.Rs.)
3A) Sunanda @ Raj Sadashiv Parab
3B) Shridhar S/o Sadashiv Parab
3C) Arun S/o.Sadashiv Parab
3D) Santosh S/o Sadashiv Parab
3E) Sou.Suhasini Shantaram Parab
4. Sitaram Bhise Parab
(since deceased L.Rs.)
4a. Bhaskar Sitaram Parab
4b. Anant Sitaram Parab
4c. Dyanadeo Sitaram Parab
4d. Prabhakar Sitaram Parab
4e. Shantabai Kanu Kasale
4f. Shakuntala Dhondu Sail
4g. Shalini Narayan Malake
4h. Malini Narayan Parab
4i. Gulab Sitaram Parab
4j. Radhabai Sitaram Parab
5. Vasant Ramchandra Parab
6. Ganpat Sagun Parab
7. Ramchandra Govind Parab
(since deceased his L.Rs.)
a) Vijay Ramchandra Parab
b) Sou.Hirabai Madhukar Sawant
c) Sou.Janabai Shashikant Parab
d) Yeshwant Ramchandra Parab
e) Anusaya Ramchandra Parab
(since deceased through L.Rs.)
7A. Vijay Ramchandra Parab
7B. Sou.Hirabai Madhukar Sawant
7C. Janabai Shashikant Parab
7D. Yeshwant Ramchandra Parab
8. Dinkar Dattaram Parab

9. Manohar Pandurang Parab
10.Dattaram Vishram Parab ...Respondents

. Name of the Appellant Nos.1D and 4F is deleted vide Court's order dated 31-10-2002 and 30-3-1987 respectively.

. Matter stands dismissed for want of prosecution as against Appellant No.4h vide Order dated 10-1-1986.

. Name of the Respondent No.7b is deleted vide Court's order dated 27-1-1988.

. Matter stands dismissed for want of prosecution as against Respondent No.7c vide Order dated 10-1-1986.

. Matter stands dismissed for want of prosecution as against Respondent No.7e (c) vide order dated 3-9-2004.

Ms Leena Patil i/b Mr.P.M.Pradhan for the Appellants
Mr.S.M.Railkar i/b Mr.G.R.Rege for the Respondent Nos.1,2,3(A), 3(C), 4(A), 4(B) and 4(C).

CORAM: A.S.OKA, J.
DATED: FEBRUARY 2,2005.

ORAL JUDGMENT:

1. On 17th February 1984 this Appeal was admitted by observing that notice was issued on ground Nos.1 and 2. Though the substantial question of law was not specifically framed at the time of admission of the Second Appeal, this Court felt that ground Nos. 1 and 2 of the Memorandum of Appeal raised substantial questions of law. The said grounds read as under:

(1) Substantial question of law is that the lower Appellate Court gave finding that the Plaintiffs failed to prove their plea of adverse possession, when all the elements to constitute the same are duly proved.

(2) Substantial question of law is that when the Plaintiff produced a number of documents to establish that the Ada of live trees was claimed by Plaintiff from ancient time as his own openly, the

Court should have decided the point of adverse possession in favour of the Plaintiff.

2. The Appellants are the original Plaintiffs. A suit was filed for perpetual injunction restraining the Respondents-Defendants from interfering with the possession of the land described in paragraph No.1 of the plaint. It is the case of the Appellants that there was a fencing in existence for number of years along the boundary of the suit land. According to the Appellants, on 16th September 1971 the Respondents removed the fencing to the extent of 700 feet and removed one tree on the suit land. It is contended in the plaint that the suit land and the fencing was ancestral property of the ownership of the family of the Appellants. A contention was vaguely raised in the alternative that the Appellants have become owners of the suit land by adverse possession. The Trial Court decreed the suit by holding that the Appellants have established that they have perfected their title to the suit land by adverse possession. An Appeal was preferred by the Respondents against said decree. In the Appeal, an application for amendment of plaint was made by the Appellants for specifically raising plea of adverse possession. Therefore, an order of remand was passed with a direction to permit both the parties to lead evidence. After remand, evidence was led. The Trial Court decreed the suit by holding that the Appellants have established the adverse possession. In an Appeal preferred by the original

Defendants, the Appellate court set aside the decree of the Trial Court and dismissed the suit. The learned Appellate Court held that plea of adverse possession was not established by the Appellants.

3. The learned Counsel appearing for the Appellants submitted that evidence on record clearly establishes the long standing possession of the Appellants over the suit land. She submitted that the existence of fencing along the boundary of the suit land is also not in dispute. The learned Counsel submitted that considering the long standing possession of the Appellants and existence of old fencing, plea of adverse possession was established by the Appellants. She further submitted that the Respondents ought to have filed a suit for possession within stipulated period of limitation under Article 65 of the Limitation Act, 1963.

4. The learned Counsel appearing for the Respondents has supported the impugned Judgment and Decree and he has pointed out the pleadings and notes of evidence on the record of the suit.

5. I have considered the rival submissions. The Appellate Court has noted that the mere long standing possession of a party is not sufficient to come to the conclusion that the said party has perfected his title by adverse possession. The party claiming adverse possession has to show that he

gained possession at the particular point of time and the fact of his possession was known to the true owners. There has to be a clear assertion of hostile title. Mere long standing possession without all other ingredients cannot establish that possession of such person was hostile and adverse.

6. The finding of the Appellate Court is that except for establishing the alleged possession for certain length of time, the Appellants have not established any other ingredients of the adverse possession.

7. As submissions were made on facts, I have examined the evidence led by the Appellants after order of remand was passed. Before remand a case made out by the Plaintiff was that the suit land belongs to the family of the Appellants. Though opportunity was granted to lead evidence after remand, I find that no attempt is made to lead the evidence to show the assertion of hostile title and hostile possession to the knowledge of the real owner. The Appellate Court has therefore recorded a finding that there was no assertion of hostile title on the part of the Appellants.

8. Though it is not permissible in a Second Appeal under Section 100 of the Code of Civil Procedure, 1908 to re-appreciate the evidence, considering the chequered history of the litigation I have gone through the notes of evidence

and after having perused the evidence I am satisfied that necessary ingredients for establishing the adverse possession were not proved by the Appellants.

9. In this view of the matter, there is no merit in the Second Appeal and the same is dismissed with no order as to costs.

Judge.

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